



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 4256-00

11 September 2000



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the comments provided by your counsel.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the rationale of the hearing panel of the Physical Evaluation Board which considered your case on 7 November 1996, a copy of which is attached. The Board noted that dysthymic disorder and major depressive disorder are affective disorders. It concluded that regardless of which diagnosis was considered unfitting, and which merely contributed to the unfitting condition, you were not severely impaired by a mental disorder prior to your discharge from the Navy. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure

SAN DIEGO HEARING PANEL RATIONALE  
IN THE CASE OF  
~~XX~~

A medical board met at Naval Medical Clinic, Pearl Harbor, Hawaii on 13 June 1996 with diagnoses of:

1. Major Depressive Disorder Recurrent 39632
2. Dysthymic Disorder 3004
3. Hypochondriasis 3007
4. Chronic Sinus Infections 4739
5. Hypogonadism 2579
6. Gastroesophageal Reflux Disease 5301

The Record Review Panel found the member unfit for duty on 28 August 1996 under VA Codes 9405 at 10% and 7399-7346 at 10% for a total of 20% disability and separation with severance pay.

This member appeared before the Panel on 07 November 1996 requesting to be found unfit for duty, rated under VA Codes 9405 at 30% and 7399-7346 at 10% for a total of 40% disability and placed on the TDRL.

Additional accepted documentary evidence consisted of:

- Exhibit B - Additional Medical Information
- Exhibit C - Copies of Performance Evaluations
- Exhibit D - Memos (3) from shipmates
- Exhibit E - Memo from MMC Fox dtd 01 Nov 96

The member contends that he is unfairly rated because his depression is severe and somehow the Record Review Panel did not understand that. The member offered only his medical record as additional medical evidence and it contained several Standard Form 600 entries from the psychiatry clinic in Hawaii. There is an entry from 17 September 1996 from Commander Karen Daly, MC, USN, staff psychiatrist, who reports that, after the member got his PEB findings, he went to her and said he felt he deserved more. Therefore, he asked for an additional memo from her attesting to the severity of his condition. She simply notes that she would contact his colleagues for more information and there is no medical addendum. The member testified he did not know why. This 17 September entry contrasts with an entry a week earlier on 11 September 1996 before the member received his PEB findings. At that time Commander Daly reported that the member was feeling much better and stated "I wouldn't mind staying in."

The member testified that his problem is that his depression has caused a memory impairment for the past five years. He said that, during this period of time, he has been sleeping twelve to sixteen hours a day, has few friends, has decreased libido and the memory problems. However, with regard to his libido, it should be noted that the member also has a diagnosis of hypogonadism which is not considered an unfitting condition. Moreover, a review of the member's personnel record suggests that he has

[REDACTED]

done quite adequately during this period of time and, in fact, was promoted to First Class Petty Officer. Furthermore, the member offered a letter from his command dated 28 February 1996 that notes that, during the member's limited duty period, he had performed his duties in an outstanding manner. Furthermore, the member submitted an Exhibit E dated 1 November 1996 from his chief who noted that the member was working very hard to do a good job and continuing to improve. He noted that he still has problems and does not presently show the potential to perform at a level of a 5.0 sailor.

The member did testify that he thought he was doing better with respect to his memory since he had been on sertraline. However, he also testified "I guess with the memory problems I'm unfit."

In evaluating any individual it is of paramount importance to remember that the mere presence of a diagnosis is not synonymous with disability. It must be established that the medical disease or condition underlying the diagnosis actually interferes significantly with the member's ability to carry out the duties of his rank and rate.

In the instant case, there are two diagnoses for which the member asks to be rated. The first is his gastroesophageal disease. There was no testimony offered that the gastroesophageal disease has ever interfered with the member's ability to carry out the duties of his rank and rate. A careful review of the member's medical record showed no evidence that the member has ever been unable to carry out the duties of his rank and rate because of his gastroesophageal disease. Therefore, this is not considered an unfitting condition.

With respect to the member's psychiatric issues, it is clear that he has, in fact, continued to perform adequately, but for the past eight or nine months this has required antidepressant medication. Furthermore, it should be noted that an inability to perform at a 5.0 level does not mean that one is unfit. The standard of performance must be navy wide and not particular to the individual. In this case the member is still performing adequately. Viewing the medical evidence in a light most favorable to the member, and noting that his performance has required antidepressant medications for at least the last eight months, the Hearing Panel finds that the member is unfit for continued naval service because of a major depressive disorder recurrent and, therefore, should be separated and rated under VA Code 9405 at 0% disability. His gastroesophageal disease should be noted as a Category III finding.

Subj: DISABILITY EVALUATION FINDINGS OF THE PHYSICAL EVALUATION  
[REDACTED]

AUTHENTICATION

kw Peters  
CAPT K.W. PETERS, USN  
PRESIDING OFFICER

PANEL MEMBERSHIP

[Signature]  
CAPT JOHN H. SHALE, MC, USN  
COL B. L. SUTHERLAND, USMC  
[Signature]

COUNSELING CERTIFICATION: ALL COUNSELING REQUIREMENTS OF  
SECNAVINST 1850.4C HAVE BEEN MET.

LT THOMAS B. BLEICH, JAGC, USNR  
RANK, NAME, AND SIGNATURE OF COUNSELOR  
[Signature]

07 NOVEMBER 1996  
DATE

MEMBER'S STATEMENT OF UNDERSTANDING:

I UNDERSTAND THAT THE RECOMMENDED FINDING OF UNFIT AND RATED AT 0% DISABILITY IS SUBJECT TO LEGAL AND QUALITY ASSURANCE REVIEWS AND APPROVAL BY THE PRESIDENT OF THE PEB. THE FINDING LETTER SIGNED BY THE PRESIDENT, PEB IS THE FINAL DETERMINATION AND CAN ONLY BE CHANGED BY THE DIRECTOR OF NCPB. A PETITION FOR RELIEF MUST BE RECEIVED BY THE DIRECTOR, NCPB NOT LATER THAN 15 DAYS FROM RECEIPT OF THE FINAL DETERMINATION. I HAVE BEEN COUNSELED CONCERNING THE PROVISIONS OF PARAGRAPH 6005 OF SECNAVINST 1850.4C.

STG1 [REDACTED] USN  
RANK, NAME, AND SIGNATURE OF MEMBER  
[REDACTED]

07 NOVEMBER 1996  
DATE

FOR ACTIVE DUTY MEMBERS - COMPLETE MAILING ADDRESS OF COMMAND/PSD  
HOLDING MEMBER'S SERVICE RECORD:  
FOR TEMPORARY DISABILITY RETIRED LIST MEMBERS (TDRL) - COMPLETE  
HOME ADDRESS AND DAYTIME PHONE NUMBERS:

OFFICER IN CHARGE

PSD SUBASE BOX 308 BLDG 679

PEARL HARBOR HI 96860

Subj: DISABILITY EVALUATION FINDINGS OF THE PHYSICAL EVALUATION

LEGAL REVIEW

DATE TO REVIEWER: \_\_\_\_\_

THE RECORD OF PROCEEDINGS OF THE PEB HAS BEEN REVIEWED FOR LEGAL SUFFICIENCY AS REQUIRED BY SECNAVINST 1850.4C AND IS LEGALLY UNOBJECTIONABLE.

L. D. Crouch  
NAME, RANK, AND SIGNATURE OF LEGAL REVIEWER

11/21/96  
DATE

PEB ELIGIBILITY DETERMINATIONS

Unfit for duty . . . . .	( Y )
Incurred . . . . .	( Y )
Intentional Misconduct/Willful Neglect . . . . .	( N )
Unauthorized Absence . . . . .	( N )
(A) Proximate Result . . . . .	( )
(B) Incurred War or NE . . . . .	( )
(C) Over 6 years . . . . .	( Y )
(D) Incurred (Aggravated) 9-15-78 to present . . . . .	( )
(E) A through D not applicable . . . . .	( )
May be Permanent . . . . .	( Y )
Ratable. . . . .	( Y )